

**ATTACHMENT A**

**Statement of Unresolved Issues**

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1A Should The Categorization Of "Local" Traffic Be Based On The Rate Centers Of The NPA-NXXs Of The Calling And Called Telephone Numbers Or The Actual Geographic Locations Of The Calling And Called Parties?	§1.31	"Local Calls" are defined as all 0-12 mile calls measured from the originating party's rate center location to the terminating party's rate center location. Local Calls must be actually originated by and actually terminated to parties physically located within the same 0-12 mile local calling area. Calls terminated to numbers which are assigned to a rate center within a local calling area but where the terminating party is physically located outside the local calling area are not considered local calls.	"Local Calls" are as defined by the Commission. Local Calls currently include all 0-12 mile calls based on the rate centers of the originating and terminating NPA-NXXs of the callers, irrespective of whether the routing point of an NPA-NXX is different than the rate center of that NPA-NXX (these include but are not limited to ZUM Zone 1 and ZUM Zone 2 calls) and, where established in incumbent LEC tariffs, ZUM Zone 3 and Extended Area Service (EAS) calls.
1B	§1.46	"Toll Free Service" means service provided with any dialing sequence that invokes toll-free, i.e., 800-like, service processing. Toll Free Service includes calls to the Toll Free Service 800/888 NPA SAC codes.	"Toll Free Service" means service provided with any dialing sequence that invokes toll-free, i.e., 800-like, service processing. Toll Free Service includes calls to the Toll Free Service 800/888 NPA SAC codes <i>and excludes services using standard NPA-NXX dialing patterns, irrespective of whether the routing point of the NPA-NXX is in a different rate center than the rating point of that NPA-NXX.</i>
2 Is Local Traffic Which Pac-West Delivers To Its Internet Service Provider Customers Subject To The Agreement?	§ 5.1.7	The parties agree that Internet traffic is not subject to local reciprocal compensation under the terms of this agreement. However, in the event the FCC or CPUC <i>further</i> rules that local reciprocal compensation is required for such traffic, <i>meet point billing should be adopted as the appropriate form of compensation because it adequately considers the revenues that the originating carrier receives for each call.</i>	All Local Calls, including Local Calls originated by or terminated to any internet service provider, are subject to payment of local reciprocal compensation under the terms of this Agreement. However, in the event the CPUC rules that the preceding sentence of this Agreement can not be enforced and that local reciprocal compensation is not permissible for such Local Calls despite the preceding sentence, and all administrative and judicial appeals of any such ruling have been exhausted, the parties shall negotiate a modification to this agreement to incorporate such ruling on a prospective basis, including the appropriate rate of any such compensation.
3 What Is The Proper Compensation To Be Paid	Pricing Appendixes	Appendix Price as set forth in Pacific's Petition for Arbitration: Pacific requests that Pac-West	Appendix-Pricing : Pac-West or, and only if the Pac-West cost study results are not accepted,

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To Pac-West For Its Termination of Local Traffic Subject To The Agreement?		charge Pacific the same rates as Pacific charges Pac-West, regardless of Pac-West's costs to provide such services.	TELRIC as adopted in R.93-04-003/193-04-002 plus the AT&T arbitration mark up for the terminating end-office switching function price as shown in Appendix Price: Pac-West.
4 Term of the Agreement	§ 22.2	The initial term of this Agreement shall be <i>two</i> (2) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 22.3, below.	The initial term of this Agreement shall be <i>three</i> (3) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 22.3, below.
5A Effective Date of the New Agreement  ISSUE RESOLVED	§ 22.1		This Agreement shall be effective upon approval by the CPUC (the "Effective Date").
5B Retroactive Application  ISSUE RESOLVED	No section reference in proposed agreement.		
6A Effective Dispute Resolution Provisions  ISSUE RESOLVED	§ 30.12.1		The Parties have agreed to adopt the dispute resolution terms in the Pacific Bell-GTE Interconnection Agreement. The language from The GTE - Pacific Agreement follows the replaced sections in this matrix.
6B  ISSUE RESOLVED	§ 30.12.3		
6C  ISSUE RESOLVED	§ 30.13.1.1		

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6D ISSUE RESOLVED	§ 30.13.2.1		
6E ISSUE RESOLVED	§30.13.5.1		
6F ISSUE RESOLVED	§ 30.13.5.2.1		
6G ISSUE RESOLVED	§ 30.13.5.2.2		
6H ISSUE RESOLVED	§ 30.13.5.3		
6I ISSUE RESOLVED	§ 30.13.6.1		
6J ISSUE RESOLVED	§ 30.13.6.2		
6K ISSUE RESOLVED	§ 30.13.7		
6 A-K	§30.13		<p>30.13. <u>DISPUTE RESOLUTION.</u></p> <p>30.13.1 <u>Alternative to Litigation.</u> Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution</p>

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			<p>process, the Parties agree to use the following alternative dispute resolution procedures as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.</p> <p>30.13.2 <u>Negotiations</u>. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or</p>

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			<p>lawsuit.</p> <p>30.13.3 <u>Arbitration</u>. If the negotiations do not resolve the dispute within sixty (60) business days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect except that the Parties may select an arbitrator outside AAA rules upon mutual agreement. A Party may demand such arbitration in accordance with the procedures set out in those rules. The Parties shall mutually agree upon a discovery plan including the type and number of interrogatories and depositions allowed. If unable to agree on the discovery plan, the Parties will ask the arbitrator to issue an arbitration plan consistent with the AAA rules. The arbitration hearing shall be commenced within sixty (60) business days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) business days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in</p>

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			<p>any court having jurisdiction.</p> <p>30.13.4 <u>Expedited Arbitration Procedures</u>. If the issue to be resolved through the negotiations referenced in Sections 30.13.2 and 30.13.3 directly and materially affects service to either Party's End Users, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) business days. Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the AAA (<i>i.e.</i>, rules 53 through 57) then in effect.</p> <p>30.13.5 <u>Costs</u>. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.</p> <p>30.13.6 <u>Continuous Service</u>. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and each Party shall continue to perform its obligations (including making payments in accordance with this Agreement.)</p>
7 Pac-West Rights Under 47. C.F.R. Sec. 51.809	§ 30.16	If <i>either Party</i> enters into an agreement (the "Other Agreement") approved by the Commission or FCC pursuant to Section 252 of	If <i>Pacific</i> enters into an agreement (the "Other Agreement") approved by the Commission or FCC pursuant to Section 252 of the Act

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		the Act (regardless of whether the approved agreement was negotiated or arbitrated) which provides for the provision of arrangements covered in this Agreement to another requesting Telecommunications Carrier, including an Affiliate, <i>such Party</i> shall make available to the other Party such arrangements pursuant to Section 252(i) and applicable rules and regulations thereunder.	(regardless of whether the approved agreement was negotiated or arbitrated) which provides for the provision of any <i>individual interconnection, service, or network element</i> arrangement covered in this Agreement to another requesting Telecommunications Carrier, including an Affiliate, <i>Pacific</i> shall make available to the Pac-West such <i>individual interconnection, service, or network element</i> arrangement upon the terms and conditions provided in the Other Agreement which are legitimately related to the purchase of the individual element being sought. Pac-West shall notify Pacific in writing of the terms and conditions which it desires to incorporate into this Agreement, and such incorporation shall become effective thirty days after such notice. At its sole option, Pac-West may also avail itself of the Other Agreement in its entirety. Nothing in this Section 30.16 is intended to or shall be construed to restrict in any manner any Party's rights pursuant to Section 252 of the Act or any regulations adopted thereunder.
8A Application of Rates	§ 5.3.2.1	The rates, terms, conditions in this Section 5.3 apply only to the termination of Local Traffic, unless otherwise noted in Section 5.	The rates, terms, conditions in this Section 5.3 apply to all traffic under this Agreement except that traffic subject to Section 5.5, below.
8B ISSUE RESOLVED	§ 5.3.2.2		DELETE IN ITS ENTIRETY.
8C ISSUE RESOLVED	§ 5.3.3.1	The Parties will pay to one another the charges for the following rate elements for the termination of Local Traffic.	
8D	§ 5.3.3.1(a)	(i) Setup per Call, and (ii) MOU;	(i) Setup per Call <i>attempt</i> , and (ii) MOU;
8D	§ 5.3.3.1(c)	(i) Setup per Call	(i) Setup per Call <i>attempt</i> , and



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8E	§ 5.5	(ii) MOU; Reciprocal Compensation for Termination of IntraLATA Interexchange Traffic. For intrastate intraLATA interexchange service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service ("MTS") and originating access rates for 800 Service as set forth in each Party's Intrastate Access Service Tariff. For interstate intraLATA intercompany service traffic (i.e., when a LATA crosses a state boundary), compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service ("MTS") and originating access rates for 800 Service as set forth in each Party's Intrastate Access Service Tariff. <i>The rates charged under this section by CLEC to PACIFIC shall be no greater than the rates contained in PACIFIC's Switched Access tariff.</i>	(ii) MOU; [Issue only as to last sentence]
8F	§ 22.6	If upon expiration or termination the Parties are negotiating a successor agreement, during such period each Party shall continue to perform its obligations and provide the services described herein that are to be included in the successor agreement until such time as the latter agreement becomes effective; provided however, that if the Parties are unable to reach agreement within six (6) months after termination or expiration of this Agreement, either Party has the right to submit this matter to the Commission for resolution. Until a survivor agreement is reached or the Commission resolves the matter, whichever is	If upon expiration or termination the Parties are negotiating a successor agreement, during such period each Party shall continue to perform its obligations and provide the services described herein that are to be included in the successor agreement until such time as the latter agreement becomes effective; provided however, that if the Parties are unable to reach agreement within six (6) months after termination or expiration of this Agreement, either Party has the right to submit this matter to the Commission for resolution. Until a survivor agreement is reached or the Commission resolves the matter, whichever is

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		sooner, the terms, conditions, rates, and charges stated herein will continue to apply, <i>subject to a true-up based on the successor agreement, if any.</i> Each Party agrees that it will negotiate in good faith concerning a successor agreement to this Agreement, upon request of the other Party, commencing nine months before the end of the initial term.	sooner, the terms, conditions, rates, and charges stated herein will continue to apply. Each Party agrees that it will negotiate in good faith concerning a successor agreement to this Agreement, upon request of the other Party, commencing nine months before the end of the initial term.
9 Provision of UNEs by Pac-West ISSUE RESOLVED	§ 11	Pursuant to Appendix UNE, which is attached hereto and made a part hereof, PACIFIC will provide CLEC access to Unbundled Network Elements for the provision of a telecommunication service as required by Sections 251 and 252 of the Act and in compliance with those portions of the FCC's First Report and Order in CC Docket No. 96-98 that are in effect, subject to any modifications on reconsideration, stay or appeal, under the terms and conditions described herein and in the Appendices hereto.	
10 Modification of the Agreement ISSUE RESOLVED	§ 2	See § 30.18	See § 30.18
11 Regulatory Issues ISSUE RESOLVED	§ 29.1	The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the terms in this Agreement, <u>to which they have agreed (i.e. excluding arbitrated provisions), are not inconsistent with</u> the specifically mentioned sections of the Act and are in the public interest. Each Party covenants and agrees to fully support approval of this	


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		Agreement by the Commission or the FCC under Section 252 of the Act without modification.	
11B ISSUE RESOLVED	§ 29.2		DELETE IN ITS ENTIRETY
12 Changed Language re End Office Trunking	§4.2.1 (in original draft: deleted by Pacific without explanation)	<p>1.1 Tandem Trunking - Single Tandem LATAs</p> <p><i>Where PACIFIC has a single Access Tandem in a LATA, IntraLATA Toll and Local traffic shall be combined on a single Local Interconnection trunk group at the tandem for calls destined to or from all End Offices that "home" on PACIFIC's tandem. This trunk group shall be two-way and will utilize Signaling System 7 ("SS7") signaling.</i></p> <p>1.2 Tandem Trunking - Multiple Tandem LATAs</p> <p><i>Where PACIFIC has more than one Access Tandem in a LATA, IntraLATA Toll and Local traffic shall be combined on a single Local Interconnection Trunk Group at every PACIFIC tandem for calls destined to or from all End Offices that "home" on each tandem. These trunk groups shall be two-way and will utilize Signaling System 7 ("SS7") signaling.</i></p> <p>1.3 Direct End Office Trunking</p> <p><i>The Parties shall establish direct End Office primary high usage Local Interconnection trunk groups for the exchange of IntraLATA Toll and Local traffic where actual end office traffic requires twenty-four</i></p>	<p>The Parties shall interconnect their facilities as follows:</p> <p>(a) Each Party will establish a Local Interconnection Trunk Group with each Access Tandem in the LATA(s) in which it originates or terminates Local and/or Toll traffic with the other Party. Parties may not route Local Interconnection traffic to an Access Tandem destined for an NXX that subtends another tandem. The Parties agree that direct trunking to an End Office from either Party's End Office or Access Tandem is permitted under the terms of this section.</p> <p>(b) In addition to the tandem interconnection described above, either Party may establish End Office-to-End Office or End Office-to-tandem or tandem-to-tandem trunk groups. In the case of host-remote End Offices, such interconnection shall occur at the location of the host or remote, at the option of the Party deploying the host-remote End Office.</p>

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		<i>(24) or more trunks or projected traffic demand justifies such a trunk group. These trunk groups shall be two-way and will utilize Signaling System 7 ("SS7") signaling.</i>	
13 Removal of duplicated language.  ISSUE RESOLVED	§ 5.1.8	Calls originated by one Party's End User and terminated to the other Party's End User will be classified as "Local Traffic" for purposes of intercompany compensation, if they are "Local Calls" as defined by this agreement ( <u>Section 1.31</u> ).	
14 Insertion of language reflecting two price schedules.  ISSUE RESOLVED	§ 5.4.1	The Transit Traffic rate element shall be equal to the Tandem Switching rate plus two times the Common Transport Fixed rate element, as specified in Appendix Pricing.	
15 Clarification of existing state of implementation.  ISSUE RESOLVED	§ 21.1		DELETE IN ITS ENTIRETY
16 Clarification of scope of indemnity.  ISSUE RESOLVED	§ 27.4	CLEC agrees to indemnify, defend and hold PACIFIC harmless from any loss arising out of PACIFIC's provision of 911 services to CLEC or out of CLEC's End Users' use of the 911 service, whether suffered, made, instituted, or asserted by CLEC or its End Users, including for any personal injury or death of any person or persons, except for loss which is the direct result of PACIFIC'S Bell's own negligence or willful misconduct.	
17 Making intellectual property indemnity bilateral.	§ 27.8	CLEC acknowledges that its right under this contract to interconnect with PACIFIC's network and to unbundle and/or combine PACIFIC's network elements (including combining with CLEC's network elements)	Each Party acknowledges that its right under this contract to interconnect with the other Party's network and to unbundle and/or combine the other Party's network elements may be subject to or limited by intellectual

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		<p>may be subject to or limited by intellectual property (including, without limitation, patent, copyright, and trade secret rights) and contract rights of third parties. It is the sole obligation of CLEC to obtain any consents, authorizations, or licenses under intellectual property or proprietary rights held by third parties that may be necessary for its use of PACIFIC'S network facilities under this Agreement. PACIFIC hereby conveys no licenses to use such intellectual property rights and makes no warranties, express or implied, concerning CLEC's (or any third party's) rights with respect to such intellectual property and contract rights, including, without limitation, whether such rights will be violated by such interconnection or unbundling and/or combining of elements (including combining with CLEC's network elements) in PACIFIC's network. PACIFIC does not and shall not indemnify or defend, nor be responsible for indemnifying or defending CLEC for any liability losses, claims, costs, damages, demand, penalties, or other expenses arising out of, caused by, or relating to CLEC's interconnection with PACIFIC's network and unbundling and/or combining PACIFIC's network elements (including combining with CLEC's network elements).</p>	<p>property (including, without limitation, patent, copyright, and trade secret rights) and contract rights of third parties. It is the sole obligation of each Party to obtain any consents, authorizations, or licenses under intellectual property or proprietary rights held by third parties that may be necessary for its use of the other Party's network facilities under this Agreement. PACIFIC AND CLEC hereby convey no licenses to use such intellectual property rights and make no warranties, express or implied, concerning their respective (or any third party's) rights with respect to such intellectual property and contract rights, including, without limitation, whether such rights will be violated by such interconnection or unbundling and/or combining of elements in their respective network. CLEC AND PACIFIC do not and shall not indemnify or defend, nor be responsible for indemnifying or defending the other Party for any liability losses, claims, costs, damages, demand, penalties, or other expenses arising out of, caused by, or relating to that Party's interconnection with its network and unbundling and/or combining its network elements.</p>
18 Making interconnection indemnity bilateral.	§ 27.9	(A) CLEC agrees to indemnify and hold PACIFIC harmless from and against all liability, losses, claims, costs, damages, demand, penalties, or other expenses, including but not limited to costs of litigation and reasonable	(A) CLEC agrees to indemnify and hold PACIFIC harmless from and against all liability, losses, claims, costs, damages, demand, penalties, or other expenses, including but not limited to costs of litigation and reasonable

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		<p>attorneys fees, arising out of, caused by, or relating to any real or potential claim, demand, or action that CLEC's interconnection with PACIFIC's network, or CLEC's use of services or functions offered hereunder, or unbundling and/or combining of PACIFIC's network elements (including combining with CLEC's network elements) violates or infringes upon any intellectual property rights of any third party or constitutes a breach of contract. CLEC shall notify PACIFIC in writing within ten (10) days after CLEC receives notification of any claim or suit subject to this provision. PACIFIC shall undertake and control the defense and settlement of any such claim or suit and CLEC shall cooperate fully with PACIFIC in connection herewith. In no event shall PACIFIC be liable for any consequential damages or loss of profits which CLEC may suffer arising out of same.</p>	<p>attorneys fees, arising out of, caused by, or relating to any real or potential claim, demand, or action that CLEC's interconnection with PACIFIC's network, or CLEC's use of services or functions offered hereunder, or unbundling and/or combining of PACIFIC's network elements (including combining with CLEC's network elements) violates or infringes upon any intellectual property rights of any third party or constitutes a breach of contract. CLEC shall notify PACIFIC in writing within ten (10) days after CLEC receives notification of any claim or suit subject to this provision. PACIFIC shall undertake and control the defense and settlement of any such claim or suit and CLEC shall cooperate fully with PACIFIC in connection herewith. In no event shall PACIFIC be liable for any consequential damages or loss of profits which CLEC may suffer arising out of same.</p> <p>27.9(B) PACIFIC agrees to indemnify and hold CLEC harmless from and against all liability, losses, claims, costs, damages, demand penalties, or other expenses, including but not limited to costs of litigation and reasonable attorney's fees, arising out of, caused by, or relating to any real or potential claim, demand, or action that PACIFIC's interconnection with CLEC's network, or PACIFIC's use of services or functions offered hereunder, or unbundling and/or combining of CLEC's network elements (including combining with PACIFIC's network elements) violates or infringes upon any</p>

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			intellectual property rights of any third party or constitutes a breach of contract. PACIFIC shall notify CLEC in writing within ten (10) days after PACIFIC receives notification of any claim or suit subject to this provision. CLEC shall undertake and control the defense and settlement of any such claim or suit and PACIFIC shall cooperate fully with CLEC in connection herewith. In no event shall CLEC be liable for any consequential damages or loss of profits which PACIFIC may suffer arising out of same.
19 Clarification of effect of conflict with law.  ISSUE RESOLVED	§ 30.13.8.1		The Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement. In the event of any such conflict, the requirements of the Act or the Commission shall control.
20 Clarification of scope of right to modify.  [Only issue is "consistent	§ 30.18	<i>This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of the results of arbitration by the California Public Utilities Commission. If the actions of the State of California or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction, to include the United States Supreme Court's decision in <u>AT&amp;T Corp. v. Iowa Utilities Bd.</u>, 1999 WL 24568 (U.S.), and any remand thereof, invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of this Agreement, the affected provision shall be invalidated, modified, or stayed, <u>consistent with</u> the action of the legislative body, court, or</i>	<i>This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the California Public Utilities Commission. If the actions of the State of California or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction, to include the United States Supreme Court's decision in <u>AT&amp;T Corp. v. Iowa Utilities Bd.</u>, 1999 WL 24568 (U.S.), and any remand thereof, invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of this Agreement, the affected provision shall be invalidated,</i>

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with" vs. "to the extent explicitly mandated by or required as a matter of law to comply with"]		<p><i>regulatory agency. In such event, the Parties shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.</i></p> <p><i>The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to <u>AT&amp;T Corp. v. Iowa Utilities Bd.</u>, 1999 WL 24568 (U.S.) or the outcome of any remand thereof including its rights under this paragraph. Finally, whenever a tariffed rate is cited or quoted, it is understood that said cite incorporates any changes to said tariffs as required by the Telecommunications Act of 1996.</i></p>	<p>modified, or stayed, <u>to the extent explicitly mandated by or required as a matter of law to comply with</u> the action of the legislative body, court, or regulatory agency. In such event, the Parties shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.</p> <p><i>The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to <u>AT&amp;T Corp. v. Iowa Utilities Bd.</u>, 1999 WL 24568 (U.S.) or the outcome of any remand thereof including its rights under this paragraph. Finally, whenever a tariffed rate is cited or quoted, it is understood that said cite incorporates any changes to said tariffs as required by the Telecommunications Act of 1996.</i></p>
21 Reservation of Rights  ISSUE RESOLVED	Added to §30.18	See § 30.18	
22 Performance Measures			



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(End of Attachment A.)

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## **CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

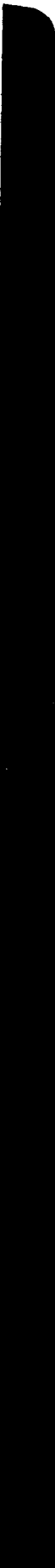
Dated April 23, 1999, at San Francisco, California.

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Rita Jayin

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.



## BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Docket No. 98-10015

In re petition of PAC-WEST TELECOMM, INC.  
for arbitration pursuant to Section 252 of the  
Telecommunications Act of 1996 to establish an  
Interconnection Agreement with Nevada Bell.

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Docket No. 99-1007

In re petition of ADVANCED TELCOM GROUP,  
INC. for arbitration of an Interconnection  
Agreement with Nevada Bell pursuant to Section  
252(b) of the Telecommunications Act of 1996.

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At a general session of the Public Utilities Commission of Nevada, held at its offices on April 8, 1999.

Present:

Chairman Judy M. Sheldrew  
Commissioner Donald L. Soderberg  
Commissioner Michael A. Pitlock  
Commission Secretary Jeanne Reynolds

## ORDER ADOPTING REVISED ARBITRATION DECISION

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

1. On March 4, 1999, the Presiding Officer in this matter filed the Arbitration Decision with the Commission.
2. Pursuant to NAC 703.288, facsimile and hard copies of the Arbitration Decision were sent to the parties (Nevada Bell, Advanced Telcom Group, Inc. ("ATG"), Pac-West Telecomm, Inc. ("Pac-West")) in the proceeding, the Regulatory Operations Staff ("Staff") of the Commission, the Attorney General's Bureau of Consumer Protection - Utility Consumers' Advocate ("UCA"), and the entities (AT&T Communications of Nevada, Inc. ("AT&T"), GTE California Incorporated d/b/a GTE of Nevada ("GTE"), and Sprint Communications Company, L.P. and Central Telephone Company - Nevada d/b/a Sprint of Nevada ("Sprint")) who filed notices of intent to comment.
3. On March 15, 1999, comments on the Arbitration Decision were filed by ATG, Pac- West, Nevada Bell, Staff, AT&T, and GTE. On March 22, 1999, reply comments were filed by Nevada Bell, ATG, Pac-West, Staff, and AT&T.
4. Pursuant to NAC 703.288(5), the scope of the comments received must be limited to whether the Arbitration Decision:
  - (a) discriminates against any telecommunications carrier that is not a party to the agreement;
  - (b) is consistent with the public interest, convenience, and necessity; or
  - (c) violates other requirements of the Commission, including, but not limited to, any standards adopted by the Commission relating to the quality of telecommunication service.

**Parties' Comments:**

**ATG:**

5. ATG states that the Federal Communications Commission ("FCC") did not give states the authority to determine that no compensation would be paid for termination of ISP traffic. (Post Arbitration Comments of ATG (hereafter "ATG Comments") at 6). Both the Telecommunications Act of 1996 ("Act") and fundamental fairness require that a local exchange carrier ("LEC"), whether incumbent LEC ("ILEC") or competitive LEC ("CLEC"), be compensated when another LEC delivers traffic to their network for competition. The FCC's Declaratory Ruling<sup>(1)</sup> states that some compensation must be paid: "... state commissions are also free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism." (Declaratory Ruling at ¶26). Thus beyond its inherent unfairness, the refusal of any compensation for the use of the CLECs' facilities constitutes an unconstitutional taking of property without just compensation. (ATG Comments at 7).

6. The refusal of reciprocal compensation will do untold damage to the development of competition in Nevada Bell's service territory and may well prevent meaningful competition from ever developing. (Id. at 8). The Internet is the most promising growth element of the telecommunications market. By not allowing reciprocal compensation for calls "terminated" to ISPs, there is a disincentive to compete for their business. (Id. at 9).

7. ATG believes that the Arbitration Decision is unclear in that it fails to address compensation for calls terminated on the network of Nevada Bell. (Id. at 11).

8. Further, the Arbitration Decision incorrectly concludes that the CLECs are gaming reciprocal compensation as the only reason to enter the market. The evidence of the record shows that the amount of compensation paid to CLECs under reciprocal compensation is not the gigantic amounts claimed by Nevada Bell to be a windfall. (Id. at 12). No where in the record did ATG indicate that its sole business would be service to ISPs. Instead, ATG is a full service telecommunications carrier.

9. In addition, ATG states that if the imbalance in the ratio of originating calls versus terminating calls is due to the success of CLECs' in gaining ISP customers, Nevada Bell should be motivated to try to compete for those customers, not be permitted to get a free ride on the CLECs facilities. (Id.). Furthermore, ATG is not planning to provide services primarily or solely to ISPs. There is simply no basis in the record to apply data specific to one company (referencing Pac-West's 1:69 and 1:683 ratios; see Arbitration Decision at ¶¶36, 75) to the operations of an unrelated, separate company with a very different business plan, method of operation, and customer base. (ATG Comments at 13).

10. ATG states that the burden is on Nevada Bell to show that some exception to reciprocal compensation should apply and how it would work. (Id. at 14). The rationale for this assertion is that the Telecommunications Act of 1996 expressly states that reciprocal compensation is the standard that ILECs must employ. (Id. citing 47 U.S.C. §251(b)(5)).

11. Finally, ATG emphasizes "the strong federal interest in ensuring that regulation does nothing to impede the growth of the Internet--which has flourished to date under [the FCC's] 'hands off' regulatory approach--or the development of competition." (Declaratory Ruling at ¶6). As a result, ATG disagrees with the Arbitration Decision in that it characterizes Internet service as not included in the telecommunications services for which competition is encouraged under the Act.

**Pac-West:**

12. Pac-West states that ISP call termination service is a fully appropriate network offering that will provide significant value to Nevada Bell and for which Pac-West is rightfully entitled to compensation. (Comments of Pac-West (hereafter "Pac-West Comments") at 5). Requiring Nevada Bell to compensate Pac-West for performing call termination functions is simply fair business. The fact that Pac-West is focusing on the provision of call termination services at this point is of no consequence and simply should not enter into the Commission's equation for a just and reasonable outcome of this proceeding. (Id. at 7).

13. Furthermore, the suggestion in the Arbitration Decision that the entitlement to reciprocal compensation should be limited to those carriers that aspire to provide two-way, plain old telephone service ("POTS") mirroring that offered by ILECs is out of step with reality. (*Id.* at 8).

14. Pac-West states that according to the FCC's Declaratory Ruling, if a state commission chooses to exclude ISP traffic from reciprocal compensation provisions 47 U.S.C. §251(b)(5), the FCC explicitly conditioned such authority on the state commission's adoption of another compensation mechanism. (*Id.* at 12 citing Declaratory Ruling at ¶26). Without adoption of a substitute mechanism for fairly compensating Pac-West for its provision of call termination services, the Arbitration Decision is unlawful. The Commission must require each party to compensate the other for terminating such traffic based on the agreed-upon prices for the terminating end office unbundled network element.

15. Pac-West believes that the proposal to classify calls based on the calling and called parties' locations should be rejected and, instead, should adopt the rate-center-to-rate-center calling convention. This convention is consistent with actual practice in the industry and is the only realistic, nondiscriminatory, and competitively-neutral means of classifying calls. (Pac-West Comments at 18).

16. Given the exemption of ISPs from access charges, neither Pac-West nor other carriers, including ILECs, are able to recover from ISPs the costs of terminating calls. The Arbitration Decision leaves Pac-West in the impossible position of being unable to charge ISPs for call termination and being unable to recover its costs from Nevada Bell. (Reply Comments of Pac-West at 1-2).

17. To interpret the tariffs and agreements as classifying calls based on end users' actual physical locations is nonsensical. Such a rating scheme simply would not be workable. (*Id.* at 4). It would require Pac-West and its ISP customers to install completely unnecessary facilities, which they are highly unlikely to do simply to serve small numbers of customers in remote areas. (*Id.* at 4-5).

#### **Nevada Bell:**

18. Nevada Bell agrees with the Arbitration Decision. The definition of local calling at Paragraph 64 of the Arbitration Decision is the accepted custom and practice of the industry and should be affirmed by the Commission. [Nevada Bell's Comments on the Arbitration Decision of Commissioner Donald Soderberg (hereafter "Nevada Bell Comments") at 4].

19. Nevada Bell stated that the FCC determined that ISP traffic is jurisdictionally interstate in nature.

We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the [FCC's] rules do not govern inter-carrier compensation for this traffic.

Declaratory Ruling at ¶26 n. 87.

20. Nevada Bell agreed with the Arbitration Decision at Paragraphs 75 and 76 that the huge disparity for incoming to outgoing calls as well as originating minutes to terminating minutes indicates that Pac-West and ATG are establishing CLECs to reap the windfall of potential reciprocal compensation payments. (Nevada Bell Comments at 9).

21. The effect of the Arbitration Decision, if approved, does not mean that compensation will never be paid for the termination of ISP traffic. Instead, the proposed interconnection agreement already provides for compensation for the exchange of interstate switched access service. The carriers jointly providing access to the interstate traffic from the ISP will establish meet point billing arrangements, just as though the ISP were an interexchange carrier. (Nevada Bell's Reply to the Comments of the Other Parties Regarding the Arbitration Decision of Commissioner Donald Soderberg (hereafter "Nevada Bell Reply Comments") at 5 citing Interconnection Agreement §5.6). Under meet point billing arrangements each carrier would bill the

interexchange carrier or ISP access charges. However, the FCC has explicitly exempted ISPs from the payment of access charges. As a result, the carriers jointly providing access to the ISPs must bear their own costs without the recovery of access charges. (Nevada Bells Reply Comments at 5). Therefore, Nevada Bell will continue to bear all the costs of originating ISP traffic to ATG and Pac-West and will offset those costs with the revenue it receives from its end users.

**Staff:**

22. Staff does not believe that the FCC's conclusion that communications to an ISP do not terminate at the ISP's local server, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state (see Declaratory Ruling at ¶12) alters the fact that ISP-bound traffic is treated as local for rate-making purposes. ISPs are no different than any other local business customer in Nevada, and reciprocal compensation is an important component of the local rate structure. To deny reciprocal compensation for traffic bound for a local ISP would constitute discriminatory application of local rates by the Commission. (Comments on Proposed Order Regulatory Operations Staff (hereafter "Staff Comments") at 3).

23. Staff reiterates the FCC's assertion that nothing in the Declaratory Ruling precludes state commissions from determining that reciprocal compensation is an appropriate interim inter-carrier compensation rule. Indeed, the FCC went so far as to make the observation that the FCC's policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic. (*Id.* citing Declaratory Ruling at ¶25).

24. Staff states that the Arbitration Decision does not appear to result in any direct discrimination against another telecommunications carrier. (Staff Comments at 3).

25. Staff believes that no party provided a plausible way to distinguish between traffic bound for an ISP and traffic bound for a non-ISP residential or business customer. As a result, Staff has both a policy and legal concern about the application of call screening mechanisms by Nevada Bell. Staff states that such call screening could violate Nevada's laws regarding interception of wire communications (wiretapping laws) promulgated at NRS 179.410-515, NRS 200.610-690, and NRS 704.285. (*Id.* at 4).

26. Since the FCC has not adopted a special rate structure for ISPs but, rather, has deferred access pricing to the local rate structure, Staff believes that all elements of the local business customer rate structure should apply to ISP traffic in a nondiscriminatory manner. Application of some local pricing elements, but not other elements, creates a void for local ISP access whereby ISPs are treated as local business line customers when served by Nevada Bell but not as local business line traffic when served by a CLEC. (*Id.* at 5).

27. Staff states that the Commission approved the interconnection agreement between Pac-West and Sprint of Nevada which included reciprocal compensation as do other interconnection agreements approved statewide by the Commission. (*Id.*).

28. Staff states that no showing was presented that indicated that a differential in the incremental costs of terminating a call are less than the reciprocal compensation rate. Even if such a showing were made, however, that should not lead to a policy conclusion that reciprocal compensation should be denied, but rather, that the rate in question should be reduced to a level consistent with incremental cost as prescribed by 47 U.S.C. §252(d)(2)(A). (*Id.* at 6-7).

29. Finally, the information on the ratio of originating minutes of use to terminating minutes of use does not support a conclusion that a subsidy flow will exist. (*Id.* at 7). It is analogous to an observation that Nevada Bell purchases all of its electricity from Sierra Pacific Power Company ("Sierra Pacific") but sells no electricity to Sierra Pacific. To conclude that Nevada Bell is therefore subsidizing Sierra Pacific would be erroneous without considering Sierra Pacific's costs.

30. Staff states that Paragraphs 77 and 78 of the Arbitration Decision appear to deny reciprocal compensation for any and all traffic terminated on the networks of ATG and Pac- West regardless of the type of end-use customer. (*Id.* at 8).



**GTE:**

31. GTE agrees with the Arbitration Decision. By finding that a local call should not be defined by the rate center of the NXX codes, the decision prevents ATG and Pac-West from avoiding charges for toll calls and interLATA calls as well. (GTE Comments Regarding Arbitration Decision (hereafter "GTE Comments") at 2).

32. But for the so-called "ESP exemption" in 47 C.F.R. pt. 69, CLECs would be paying access charges to ILECs for such traffic as interexchange carriers do. Instead, the costs incurred for transporting such traffic are borne by the ILECs, not the CLECs. It is a perversion of the access charge regime set forth in part 69 of the federal regulations to interpret the exemption to permit the collection of compensation, in addition to the avoidance of access charges. (Id. at 2-3).

33. The FCC refuted the two-call theory advanced by Pac-West and ATG. The FCC has consistently rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers. The communications at issue here do not terminate at the ISP's local server, as ATG and Pac-West contend, but instead continue to the ultimate destination or destinations. (Id. at 3 citing FCC Declaratory Ruling at ¶¶10, 12). The Presiding Officer's decision (see Arbitration Decision at ¶68) appears to be consistent with Paragraphs 10-15 of the FCC's Declaratory Ruling.

34. The Presiding Officer's ultimate conclusion in Paragraph 79 that the "just and reasonable" standard set forth in 47 U.S.C. §252(b)(2)(A) was meant to promote competition, not the Internet is correct. CLECs which serve primarily ISPs are not bestowing the benefits of the competition on consumers. These CLECs are merely attempting to take advantage of a loophole in the law at the expense of ILECs. (GTE Comments at 4).

**AT&T:**

35. AT&T states that the Presiding Officer unduly relied upon the FCC's Declaratory Ruling. It does not mandate the result reached by the Presiding Officer in the Arbitration Decision and indeed suggests that a contrary decision would be appropriate at least until the FCC concludes the rulemaking. (Id. at 2). The effect of the Arbitration Decision is that neither ILECs nor CLECs will receive any compensation for the exchange of ISP traffic. (Id. at 3). The FCC recognized that reciprocal compensation is still appropriate and that in the absence of a contrary FCC rule, state commissions have the authority and jurisdiction to order reciprocal compensation. (Id. at 2-3 citing Declaratory Ruling at ¶25).

36. In addition, AT&T states that the FCC indicated that if a state commission determined that "reciprocal compensation" is not appropriate, the state commission was still entitled to "adopt another compensation mechanism." (Reply Comments of AT&T at 2 citing FCC's Declaratory Ruling at ¶26).

**Commission Discussion:**

37. The Commission agrees with Staff's analysis of the Presiding Officer's Arbitration Decision. The Commission finds that the Arbitration Decision is not in the public interest, convenience and necessity. Therefore, the Commission should adopt the Revised Arbitration Decision, attached hereto as Attachment 1, that conforms with Staff's conclusions and recommendations.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The Revised Arbitration Decision, attached hereto as Attachment 1, is APPROVED.

2. The findings delineated in the Revised Arbitration Decision shall SUPERSEDE the Presiding Officer's Arbitration Decision filed with the Commission on March 4, 1999.

3. The Commission retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order Adopting Revised Arbitration Decision.

By the Commission,  
JUDY M. SHELDREW, Chairman  
— DONALD L. SODERBERG, Commissioner and Presiding Officer  
MICHAEL A. PITLOCK, Commissioner  
Attest: JEANNE REYNOLDS, Commission Secretary  
Date: 4/12/99 Carson City, Nevada

1. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, CC 99-68, FCC 99-38, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, rel. 2/26/99 (hereafter "Declaratory Ruling").

Attachment 1

## BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Docket No. 98-10015  
In re petition of PAC-WEST TELECOMM, INC.  
for arbitration pursuant to Section 252 of the  
Telecommunications Act of 1996 to establish an  
Interconnection Agreement with Nevada Bell.

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Docket No. 99-1007  
In re petition of ADVANCED TELCOM GROUP,  
INC. for arbitration of an Interconnection  
— Agreement with Nevada Bell pursuant to Section  
252(b) of the Telecommunications Act of 1996.

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## REVISED ARBITRATION DECISION

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

### **Procedural History:**

1. On October 12, 1998, Pac-West Telecomm, Inc. ("Pac-West") filed a Petition for Arbitration to establish an Interconnection Agreement with Nevada Bell. The petition was filed pursuant to Chapters 703 and 704 of the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), the regulations adopted by the Commission in Docket No. 96-12001 (later promulgated at NAC 703.280 et seq.), and 47 U.S.C. §251 et seq. This matter was designated as Docket No. 98-10015. Pac-West is currently authorized to provide resold intrastate interexchange, alternative operator and competitive local exchange services within Nevada pursuant to Certificate of Public Convenience and Necessity ("CPC") 2036 Sub 3.

2. Pac West requests that the Commission arbitrate the following issue: whether a party receiving traffic from the other for termination to an Internet Service Provider ("ISP") is entitled to receive reciprocal compensation from the other pursuant to 47 U.S.C. §251(b)(5).

— 3. On October 22, 1998, the Commission issued a Notice of Petition for Arbitration and Notice of Prehearing Conference for Docket No. 98-10015.

4. On November 6, 1998, Nevada Bell filed its Response to the Petition.

5. By November 18, 1998, the Commission received Notices of Intent to Comment from AT&T

Communications of Nevada, Inc. ("AT&T"), GTE California Incorporated, d/b/a GTE of Nevada ("GTE"), the Attorney General's Bureau of Consumer Protection - Utility Consumers' Advocate ("UCA"), Advanced Telcom Group, Inc. ("ATG"), and Sprint Communications Company L.P.

6. On November 30, 1998, the Commission held a duly noticed Prehearing Conference. Appearances were made by ATG, AT&T, GTE, Nevada Bell, Pac-West, Sprint Communications Company L.P., the Regulatory Operations Staff ("Staff") of the Commission, and the UCA. At the prehearing conference, all parties involved agreed to waive the 9-month deadline for resolution of the unresolved issues as required in 47 U.S.C. §252(b)(4)(C). In its place, the parties proposed a procedural schedule in which the Arbitration Decision would be filed on March 4, 1999, and a final Commission decision would be issued no later than April 5, 1999. On December 10, 1998, the Commission issued a Procedural Order in Docket No. 98-10015. Also, on December 10, 1998, the Commission issued a Notice of Hearing in Docket No. 98-10015.

7. On January 8, 1999, ATG filed a Petition for Arbitration to establish an Interconnection Agreement with Nevada Bell. The petition was filed pursuant to Chapters 703 and 704 of the NRS and NAC, 47 U.S.C. §251 et seq., and, in particular, NAC 703.280 et seq. This matter was designated as Docket No. 99-1007. ATG is currently authorized to provide resold local and intrastate long distance services within Nevada pursuant to CPC 2400.

8. ATG requests that the Commission arbitrate the following issue: whether a party receiving traffic from the other for termination to an ISP is entitled to receive reciprocal compensation from the other pursuant to 47 U.S.C. §251(b)(5).

9. On January 8, 1999, ATG also filed a Motion to Consolidate Hearings on Arbitration of Common Issue pursuant to NAC 703.550 et seq. and 47 U.S.C. §252(b). On January 15, 1999, Staff filed a Joinder in the Motion. No other comments were filed. On January 19, 1999, the Commission issued an Order consolidating Docket Nos. 98-10015 and 99-1007.

10. On January 8, 1999, prefiled direct testimony was filed by ATG and Pac-West. On January 15, 1999, prefiled direct testimony was filed by Nevada Bell. On January 22, 1999, prefiled direct testimony was filed by Staff. On January 29, 1999, prefiled rebuttal testimony was filed by ATG.

11. On January 19, 1999, the Commission issued a Notice of Petition for Arbitration; Notice of Prehearing Conference; Notice of Hearing in Docket No. 99-1007.

12. On February 3, 1999, Notices of Intent to Comment were filed in Docket No. 99-1007 by GTE and Sprint Communications Company, L.P. and Central Telephone Company - Nevada d/b/a Sprint of Nevada (collectively, "Sprint").

13. On February 10, 1999, the Commission held a prehearing conference for Docket Nos. 98-10015 and 99-1007. Appearances were made by ATG, Nevada Bell, Pac-West, and Staff.

14. On February 10, 1999, the Commission commenced a hearing in the consolidated matter of Docket Nos. 98-10015 and 99-1007. Appearances were made by ATG, Nevada Bell, Pac-West, and Staff. The hearing lasted two days which included 385 pages of transcript and 14 exhibits admitted into evidence. At the close of the hearing the Presiding Officer questioned the parties whether the final decision in this matter by the Commission could be extended to April 8, 1999. No party expressed an opposition to the change.

15. On February 18, 1999, post-hearing briefs were filed by ATG, Nevada Bell, Pac-West, Sprint, and Staff.

16. On February 26, 1999, the Federal Communications Commission ("FCC") released In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; In the Matter of Inter-Carrier Compensation for ISP-bound Traffic, CC Docket No. 96-98, CC 99-98, FCC 99-38, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, rel. 2/26/99 (hereafter "Declaratory Ruling"). The FCC concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate. In addition, the FCC concluded that reciprocal compensation obligations should only apply to local traffic that originates and terminates within state defined local calling areas.

Finally, the issue of reciprocal compensation for ISP-bound traffic was left to the discretion of state commissions in the exercise of their authority to arbitrate interconnection disputes.

#### **Statutory Guidelines:**

17. Pursuant to the Telecommunications Act of 1996 [Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code)] and, in particular, 47 U.S.C. §252(b)(2)(I), the Presiding Officer has been presented with one issue to resolve in this arbitration: **whether a party receiving traffic from the other for termination to an ISP is entitled to receive reciprocal compensation from the other pursuant to 47 U.S.C. §251(b)(5)?**

18. Pursuant to 47 U.S.C. §251(b)(5), each local exchange carrier ("LEC") has the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

19. Pursuant to 47 U.S.C. §251(c)(2)(D), each incumbent local exchange carrier ("ILEC") has the duty to provide for interconnection with the local exchange carrier's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

20. For the purposes of compliance with section 47 U.S.C. §251(b)(5) by an ILEC, the Commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. 47 U.S.C. §252(d)(2)(A)(i).

#### **Position of the Parties:**

##### **Pac-West and ATG:**

21. Pac-West states that over the past sixteen years, the FCC has consistently yielded to state jurisdiction over switched calls to Enhanced Service Providers, including ISPs. Without exception, the provision of such services has been deemed an intrastate endeavor. (Pac-West Post-Hearing Brief at 6).

22. While Nevada Bell argues that the FCC has asserted jurisdiction over dial-up access to the Internet through an FCC memorandum decision, Nevada Bell neglected to cite the portion of the decision (Tr. at 275-276), where the FCC makes it unambiguously clear that the order did not consider or address issues regarding whether LECs were entitled to receive reciprocal compensation when they deliver to ISPs circuit-switched dial-up traffic originated by interconnecting LECs. (GTE Operating Cos., CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292, rel. 10/30/98 at ¶2).

23. In addition, ATG states that the FCC's Part 36 Separations Rules do not support Nevada Bell's claim that the FCC requires calls made to ISPs to be assigned to the interstate jurisdiction of the FCC. (ATG Post-Hearing Brief at 13). The FCC ten percent rule applies only to private line and WATS lines; it does not apply to switched lines; and no rule in Part 36 applies the FCC's ten percent rule to the circuit-switched services which are at issue in this proceeding. (Tr. at 269-270).

24. Even if the FCC were to reverse its earlier decisions to leave regulation of circuit-switched ISP traffic to the states, this Commission is nevertheless bound by the Telecommunications Act of 1996 to order the payment of reciprocal compensation for the completion of calls to ISPs until the FCC adopts contrary regulations. (Pac-West Post-Hearing Brief at 8).

25. Pac-West intends to locate a switch in Las Vegas and provide access to ISPs (also located in Las Vegas) via the switch in Las Vegas. Under this scenario, a Nevada Bell customer located in Reno would connect with an ISP in Las Vegas via a switch located in Las Vegas. (Tr. at 8 - 9). Reno and Las Vegas are located in different local access and transport areas (interLATA). Nevertheless, Pac-West is seeking to have reciprocal compensation apply to interLATA calls simply because the customer will access the ISP via a local number.

26. Pac-West and ATG seek to have the Commission define local calls by comparing the rate center of the

NXX codes, rather than by comparing the physical location of the calling and called parties within the local calling area. (Pac-West Petition for Arbitration at 3; ATG Petition for Arbitration at 3).

- 27. Pac-West states that contrary to Staff's suggestion, there really is no issue of potentially adverse impacts on the local versus toll calling structure since very few toll calls would ever typically be made by consumers for the purpose of accessing ISPs. Thus, Pac-West's service would not be displacing any carrier's toll revenues. Instead, the real issue is merely whether Pac-West should be permitted to push the envelope a little bit in the extent to which local-rated ISP access is made available to consumers in outlying areas. (Pac-West Post-Hearing Brief at 15).
- 28. Pac-West believes that the best interests of Nevadans lie in allowing Pac-West to provide its services on a foreign exchange basis. (Id. at 15-16).
- 29. ATG states that even with Nevada Bell's proposal to monitor the usage of phone lines for Internet traffic (Tr. at 257-59), Nevada Bell still has not proposed a way to determine which traffic is terminating at ISPs. (ATG Post-Hearing Brief at 14). The end user requests may only request information from the ISP, and never go anywhere else, or may request information that is held in cache memory by the ISP and not need to go beyond the ISP. (Tr. at 176-77, 197-98, 229-30).
- 30. ATG believes that an Internet call is two calls. One is a call from the end user to the ISP, over which this Commission has jurisdiction and for which reciprocal compensation applies. The other call is an unregulated Internet data exchange called Internet Service, and is provided without Nevada regulation by entities such as America On Line and Nevada Bell Internet. (ATG Post-Hearing Brief at 16). Consequently, when a call from the public switched network reaches the first ISP modem bank, it ceases to be a telecommunications service provided by a common carrier. (Ex. 4 at 4).
- 31. ATG states that there is nothing in 47 U.S.C. §251 et seq. or the FCC's implementing rules which would prevent this Commission from finding that all local traffic is subject to the obligation of reciprocal compensation. There is no FCC decision in any proceeding which would limit or prohibit the Commission from making this finding. (ATG Post-Hearing Brief at 10).
- 32. ATG and Pac-West state that the purpose of reciprocal compensation is to compensate carriers for carrying out call termination functions. When an ILEC terminates a call on a CLEC's network, the ILEC should pay the costs of terminating the call. If reciprocal compensation is not applied to calls to ISPs, the ILEC avoids the costs of terminating the call on its own network and avoids reciprocal compensation payment to terminate its customer's call on another carrier's network. (Tr. at 32). This gives the ILEC a competitive advantage over competing carriers.
- 33. ATG states that fundamental fairness dictates that ILECs and CLECs should each pay the other to terminate all local switched telecommunications traffic. (Ex. 3 at 5-6; ATG Post-Hearing Brief at 2).
- 34. ATG states that Nevada Bell is profiting handsomely from the growth in data traffic, and both revenues and earnings are outstripping the growth in number of access lines. (Ex. 4 at 19-20). The bottom line under any analysis is that revenue growth to Nevada Bell from Internet related sales is dwarfing any real or imagined expense from reciprocal compensation. (ATG Post-Hearing Brief at 7).
- 35. In addition, Nevada Bell has the same opportunity as do the CLECs to avoid paying reciprocal compensation, if it makes an effort to compete for the business of the ISPs. If Nevada Bell were to win ISP companies as customers or even retain the ones it has, then it too would receive reciprocal compensation from other carriers for ISP traffic, as it undoubtedly must if local independents' customers are dialing into ISPs in the Nevada Bell territory. (Ex. 4 at 6).
- 36. Pac-West stipulated that based on November 1998 data, its ratio of originating calls to terminating calls will be 1:69, while the ratio of originating minutes of use to terminating minutes of use will be 1:683. (Tr. at 51). However, ATG explains that the reason for the discrepancy in numbers between calls terminated on the CLECs' network and the ILEC's network is due to the relative size of the companies and their customer bases. (ATG Post-Hearing Brief at 2).

37. Pac-West states that Nevada Bell's reciprocal compensation payments for any local call, whether to an ISP or any other end user, should equal, dollar for dollar, the costs that Nevada Bell avoids by not having to transport and terminate the call itself. If there is, in fact, no equality between reciprocal compensation payments and avoided costs under the agreement, Nevada Bell, alone, is at fault for attempting to somehow game the system or otherwise failing to accurately state its costs. *Id.* at 12.

38. However, Nevada Bell has not contended that the UNE prices are faulty. Therefore, it must be concluded that the UNE prices set forth in the agreement are accurate and, as a consequence, that Nevada Bell is truly indifferent, from a long run cost perspective, as to whether it terminates local traffic or whether Pac-West terminates such traffic. (Pac-West Post-Hearing Brief at 12).

39. Strong considerations of law, public policy, and fundamental fairness to various competitive market entrants compel a finding by this Commission that all exchange of local traffic, including voice and data, should be subject to local reciprocal compensation. Fundamentally, reciprocal compensation is a competitively neutral, fair, just, and reasonable mechanism for compensating termination of calls, and no good reason exists to exclude calls terminated to ISPs. This fundamental reasoning has led commissions in some 27 other states to the same conclusions, with no state commission finding otherwise. (ATG Post-Hearing Brief at 10-11).

**Nevada Bell:**

40. Nevada Bell believes that ISP calls are jurisdictionally interstate in nature. Nevada Bell cites an FCC order covering GTE's offering of a DSL service which stated that the communications between an end user and an ISP is not made up of an intrastate portion and an interstate portion, but is one communication. (Nevada Bell Post-Hearing Brief at 3 citing GTE Operating Cos., CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292, rel. 10/30/98 (hereafter "Memorandum Opinion and Order") at ¶¶1, 17).

41. Nevada Bell also states that because the FCC allowed ISP to access the public switched network via a business line at state tariff rates, the FCC asserted jurisdiction over Internet usage, making the call jurisdictionally interstate. (Tr. at 241). Since ISP calls are jurisdictionally interstate in nature, they should be excluded from the compensation provisions of an agreement for the interconnection of local traffic. (Nevada Bell Post-Hearing Brief at 11).

42. In addition, the communication does not terminate at the ISP's modem, but continues on to the website. (Nevada Bell Post-Hearing Brief at 3 citing Memorandum Opinion and Order at ¶¶19-20; Ex. 8 at 16-17). This continuous transmission may traverse both state lines and national borders. (Nevada Bell Post-Hearing Brief at 4). Without significant administrative expense to develop a jurisdictional reporting, auditing, and verification procedure for all of the parties handling the calls, or significant investment in measuring equipment by all of the parties, the end-to-end jurisdiction of the call cannot be determined. (*Id.* at 13-14).

43. Therefore, where it is difficult to determine through measurements or reporting, the jurisdiction of the calls using a service, the service is considered to be "contaminated" (a service handling both interstate and intrastate calls) and may be directly assigned to interstate if the station-to-station or end-to-end interstate usage is more than ten percent of the total usage of the service. If the interstate usage is less than ten percent, the usage and costs for the service are assigned to intrastate. (Ex. 8 at 15 - 16).

44. However, if the calls, usage, and costs are intrastate, they are under the jurisdiction of the Commission. (Ex. 5 at 15).

45. Nevada Bell stated that the term "local call" denotes a call made within a geographical area, where both the originating and terminating party are located, and where there are no toll or other costs beyond the local exchange service rates. (*Id.* at 1-2). Nevada Bell agrees with Staff that the traditional definition of a local call should be used in this matter. (Nevada Bell Post-Hearing Brief at 16-17).

46. Nevada Bell believes that using the definition of a "local call" proposed by Pac-West and ATG, would overturn years of industry custom and practice. It would also enable Pac-West and ATG to avoid paying

access charges for toll-free type service and even avoid access charges for interLATA services offered to their customers. (Id. at 16).

- 47. Nevada Bell stated that the FCC rejected the "two call" theory and found that ISP Internet calls do not end or terminate at the ISP but are a single, continuous, end-to-end communications that is originated by a customer, transported to an ISP who then transports that call to a site on or beyond the Internet termination. (Id. at 9).

48. Nevada Bell states that given the nature and current uses of the Internet, it is not possible to identify or separate most Internet traffic by jurisdiction because the customer does not dial 1+ or 0+, but normally dials only seven digits to reach an ISP. Many interconnected companies may be involved in handling the ISP Internet call which may be terminated anywhere in the United States or the world. (Id. at 13).

49. Nevada Bell states that the FCC has determined that reciprocal compensation only applies to local communications:

Transport and termination of local traffic for purposes of reciprocal compensation are governed by Sections 251(b)(5) and 252(d)(2) while access charges for interstate long-distance traffic are governed by Sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long distance traffic.

Declaratory Ruling at ¶1033.

The FCC went on to add:

— We conclude that Sections 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area as defined in the following paragraph . . . We find that reciprocal compensation provisions of Section 252(b)(5) for transport and termination of traffic do not apply to transport or termination of interstate or intrastate interexchange traffic.

Id. at ¶1034.

These holding eliminate any application of reciprocal compensation to interstate or interexchange traffic. (Nevada Bell Post-Hearing Brief at 8).

50. Nevada Bell asserts that applying reciprocal compensation to dial up calls to ISPs discourages local competition. (Tr. at 7). If reciprocal compensation is permitted, CLECs could begin to use such payments for Internet traffic to fund payments to ISPs for traffic delivered to the ISPs. CLECs could remit some of their reciprocal compensation payments to pay these ISPs for connecting to the CLECs in the first place. Further, Nevada Bell states that it "is prohibited by law from charging its end users, ISPs, or other carriers, access charges for the interstate access costs they are causing." (Nevada Bell Post-Hearing Brief at 20). Therefore, Nevada Bell would be forced to subsidize the CLECs and their interconnecting ISPs for the interstate communications originating from Nevada Bell customers. (Id. at 20).

51. The subsidy arises because Nevada Bell is forced to bear all the costs of originating these calls on its network, is not permitted to charge end users to recover all these costs, and, under Pac-West's and ATG's interpretation, is forced to pay all of the costs of terminating these calls to the ISPs. (Id. at 20).

**Staff:**

- 52. Staff believes that if a call to an ISP is an intrastate call, the Commission clearly has jurisdiction to regulate that call. (Staff Post-Hearing Brief at 4). Staff states that the intent of the end user in making a call is irrelevant when determining whether a call is jurisdictionally interstate or intrastate. A call is interstate because it crossed state boundaries while the converse is also true. Therefore, intent cannot be the basis for determining whether a call to an ISP is jurisdictionally interstate. (Id. at 4-5).

53. Any concern regarding interstate and intrastate separations is irrelevant to the determination of whether the Commission has rate-making authority over calls to ISPs. (Id. at 4). The FCC, by allowing ISPs to access the public switched network via a business line at state tariff rates, in effect granted states rate-making authority which includes the authority to determine whether reciprocal compensation should apply to calls to ISPs. (Id.).

54. Staff believes that a local call should be defined on the basis of the physical locations of the calling and called party. This is the traditional definition of local calling as currently used for rate-making purposes in Nevada. (Ex. 14 at 8).

55. While Pac-West and ATG propose including interLATA calls as local calls for reciprocal compensation purposes, Nevada Bell is currently prohibited from carrying interLATA traffic. Therefore, the Commission should not define calls which must cross interLATA boundaries as local. (Staff Post-Hearing Brief at 6).

56. Staff states that a call to an ISP is viewed as comprising two discrete elements, one being a telecommunications service by which the end user connects to the ISP modem through a local call, the second being an information service by which the ISP converts the customer's analog messages into data packets which are individually routed through its modem to host computer networks located throughout the world. (Ex. 14 at 4 citing California Public Utilities Commission, R-95-04-043 & I-95-04-044, Order, rel. 10/22/98).

57. Staff believes that when the dial up call to the ISP is a local call, reciprocal compensation should apply, as it does with all other local calls. (Staff Post-Hearing Brief at 6). The failure to apply reciprocal compensation to dial up calls to ISPs would discourage local competition. (Ex. 14 at 12). There is no technical reason to treat calls to ISPs any differently from other voice calls since both types of calls use the same telecommunications network functions. (Id. at 12).

58. The guiding principles to be employed by the Commission should be whether the ILEC and CLEC compete on an equal playing field, and whether the public interest is served. (Id. at 3). The only imbalance, if any does exist, would be due to the fact that Nevada Bell is a monopoly or dominant firm having most of the local telephone customers. (Id. at 11).

59. Staff believes Nevada Bell's primary concern seems to be that Nevada Bell would pay large amounts of money in reciprocal compensation payments if reciprocal compensation were to apply to dial up calls to ISPs. (Ex. 8 at 7-8). Yet, if Nevada Bell's negotiated reciprocal compensation rate is equal to the forward-looking cost of terminating the local call, then Nevada Bell avoids the same cost when its customers' calls are terminated on another carrier's network. (Ex. 14 at 16). Therefore, the appropriate solution to any perceived problem in overpayment by Nevada Bell would be to adjust the reciprocal compensation rates, not eliminating the application of reciprocal compensation. (Tr. at 379 - 380).

#### **Commission Discussion:**

60. The issue before the Commission is whether Pac-West and ATG are entitled, pursuant to 47 U.S.C. §251 (b)(5), to receive reciprocal compensation from Nevada Bell when they receive traffic from Nevada Bell that Pac-West and ATG terminate to an ISP. In order to decide this issue, four determinations must be made: (A) Does the Commission have jurisdiction to make a decision in this matter? (B) What is a local call? (C) What is the nature of a call "terminated" to an ISP? (D) Should reciprocal compensation apply to a call "terminated" to an ISP?

#### **A. Jurisdiction**

61. As the FCC observed, state commission authority over interconnection agreements pursuant to 47 U.S.C. §252 extends to both interstate and intrastate matters. (Declaratory Ruling at ¶25 citing CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15544 (1996)). In the absence of a federal rule regarding the appropriate inter-carrier compensation for this traffic, the Commission has jurisdiction to determine the issue of reciprocal compensation for these interconnection agreements pursuant to the Commission's statutory



obligations under the Telecommunications Act of 1996 (47 U.S.C. §252). As long as the carriers are located in the boundaries of the State of Nevada, the Commission has jurisdiction over that agreement.

62. Furthermore, if a call to an ISP is an intrastate call, the Commission has jurisdiction because the call was made and completed within the boundaries of the state of Nevada. Finally, the Commission agrees with Staff that the FCC, by allowing ISPs to access the public switched network via a business line at state tariff rates, in effect granted states rate-making authority which includes the authority to determine whether reciprocal compensation should apply to calls to ISPs.

63. Reciprocal compensation between ILECs and CLECs is a conventional local rate structure element that applies to residential and business customer traffic pursuant to 47 U.S.C. §251(b)(5) and is the subject of state commission requirements pursuant to 47 U.S.C. §252(d)(2)(A).

### **B. Local Call**

64. The Commission finds that a local call is based on the physical location of the originating and terminating parties where there are no toll or other costs beyond the local exchange service rates. To define a local call based on the rate center of the NXX codes as proposed by Pac-West and ATG would subvert industry custom and practice. It could allow them to avoid access charges for toll calls and interLATA calls as well.

### **C. Call "Terminated" to an ISP**

65. For purposes of this discussion, Internet calling is a communication that begins with an end user in Nevada dialing a local telephone number in Nevada for connection to an ISP. The call passes through Nevada Bell's central office and is placed on an interconnection trunk for completion through a CLEC's switch. At the CLEC's switch, the call is then placed on another trunk and sent to an ISP's router, which may be located in another LATA. At the ISP's router, the connection remains open and the caller can communicate through the Internet with data bases in other states and countries.

66. The FCC has traditionally determined jurisdictional nature of a communication by the end points of the communication. (Declaratory Ruling at ¶10). Since the FCC has not adopted a special rate structure for ISPs but has deferred access pricing to the local rate structure, all elements of local business rate structures should apply to ISP traffic in a non-discriminatory manner.

67. The Commission finds that a call "terminated" to an ISP consists of two parts: the telecommunications service and information service. Those two parts comprise one communication.

### **D. Reciprocal Compensation**

68. Reciprocal compensation compensates one company for allowing another company to use its facilities. It covers the cost so that the prior company does not have to duplicate construction and equipment used to complete the call.

69. Pursuant to 47 U.S.C. §251(b)(5), reciprocal compensation obligations should apply to traffic that originates and terminates within state-defined local calling areas. (*Id.* at ¶24 citing CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16013 (1996)). As required by the FCC, local access pricing for ISPs in Nevada is the local rate structure for business line customers. Reciprocal compensation is a local rate structure element.

70. From the record presented to the Commission, the parties were unable to show what portion of calls "terminated" to an ISP remain local. Nor did any party provide a plausible way to distinguish between traffic bound for an ISP and traffic bound for a non-ISP or business customer. Furthermore, no party provided a plausible way to identify and separate Internet traffic by jurisdiction. Once the traffic reaches the ISP modem, nobody knows for sure what is local or long distance after that point. (Tr. at 229-230).

71. The Commission finds that local access pricing for ISPs in Nevada is the local rate structure for business

line customers and reciprocal compensation is a local rate structure element.

72. Pac-West stipulated that based on November 1998 data, its ratio of originating calls to terminating calls will be 1:69, while the ratio of originating minutes of use to terminating minutes of use will be 1:683. (Tr. at 51). This information does not support a conclusion that a subsidy flow will exist. A subsidy determination cannot be based on the ratio of sales and can only be determined by consideration of the prices and costs of the services purchased. No evidence was presented to substantiate a subsidy claim nor was a request for arbitration on a just and reasonable reciprocal compensation rate made. This concern is misplaced if the reciprocal compensation rate is based on the incremental costs to the CLEC for terminating a call.

73. No party identified a plausible and precise method to distinguish between traffic bound to ISPs and traffic bound to non-ISP local customers. Nevada Bell's call screening method gives rise to public interest and legal concerns and should not be implicitly endorsed by a decision to deny reciprocal compensation to ISPs which are a subset of local access customers.

74. As required by the FCC, local access pricing for ISPs in Nevada is the local rate structure for business line customers. Reciprocal compensation is a local rate structure element. Denial of reciprocal compensation would represent discriminatory application of an important local rate element available for traffic to the business line customers.

75. Denial of reciprocal compensation for local traffic bound for an ISP will slow the development of competition and negatively affect the Nevada economy and public interest.

76. No party provided analysis or evidence that reasonably supports a subsidy claim. Congress provided the criteria to prevent unreasonable cash flows under reciprocal compensation by requiring an incremental cost foundation. (See 47 U.S.C. §252(d)(A)). No local exchange carrier receives a subsidy if the reciprocal compensation rate is based on the additional costs of terminating calls. The appropriate policy standard to prevent service subsidization is cost-based rates, not a policy that disbands service.

77. Reciprocal compensation should be paid by Nevada Bell to Pac-West or ATG for traffic originated by a Nevada Bell customer and terminated to any customer, including an ISP, obtaining local access from Pac-West or ATG when those customers are located within the same Nevada Bell local calling area. Similarly, reciprocal compensation should be paid by Pac-West or ATG to Nevada Bell for traffic originated by a Pac-West or ATG customer and terminated to any customer, including an ISP, obtaining local access from Nevada Bell when those customers are located within the same Nevada Bell local calling area.

**CERTIFICATE OF SERVICE**

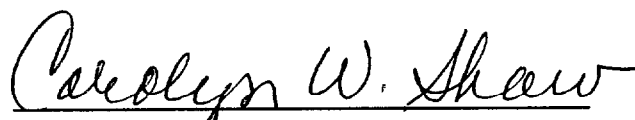
I, Charolyn W. Shaw, hereby certify that on this 27<sup>th</sup> day of April 1999, copies of the foregoing Reply Comments of Pac-West Telecomm, Inc. were served by first-class mail, postage prepaid to the following; except as indicated:

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